

**THE HON'BLE Ms. JUSTICE G.ROHINI**

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**WRIT PETITION NO: 16619 of 2006**

Dated: 12 -09-2006

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Between:

Vikas Soni

**..... PETITIONER**

AND

The Convenor,  
EMCET, JNTU, Masabtank, Hyderabad  
And three others.

**.....RESPONDENTS**

**THE HON'BLE Ms. JUSTICE G.ROHINI**

**WRIT PETITION NO: 16619 of 2006**

**ORDER:**

The petitioner being a minor represented by his father and natural guardian filed this writ petition seeking a declaration that the order, dated 02-08-2006, issued by the fourth respondent-Assistant Commissioner, Backward Class Welfare, Hyderabad, whereunder the claim of the petitioner for the reservation under B.C. quota for admission into B.Tech course was rejected, is arbitrary and illegal.

The facts, in brief, are as under:

Admittedly, the petitioner's father was native of Rajasthan. It is stated that he migrated to Andhra Pradesh in the year 1991 and has been carrying on business at Eluru, West Godavari District. The petitioner prosecuted his studies in Andhra Pradesh and having completed Intermediate course, he appeared for EAMCET seeking admission in Engineering Course. Having been qualified in the entrance test, he attended the counselling conducted by the first respondent-convener, EAMCET.

It is claimed that the petitioner belongs to Viswabrahmin caste, which is notified as B.C-B category in Rajasthan and also in the State of Andhra Pradesh. Initially, the petitioner attended the counselling under open category and he was given provisional admission in Computer Science in Engineering in GMR Institute of Technology, Rajam in Srikakulam District. Subsequently, the petitioner attended counselling on 02-08-2006 seeking admission under B.C. category since he expected admission in a better course and in a better

college. In support of his claim that he belongs to B.C-B category, the petitioner produced a certificate dated 22-07-2006 issued by the Mandal Revenue Officer, Eluru, in which it was stated that the petitioner belongs to Viswabrahmin community, which is recognized as B.C-B and he is native of Eluru Mandal, West Godavari District of Andhra Pradesh. He also produced a certificate dated 01-08-2006 issued by the Mandal Revenue Officer, Eluru certifying that the father of the petitioner by name Muralidhar Soni belongs to Viswabrahmin community and that he is a native of Eluru. On the basis of the same, the first respondent gave provisional allotment to the petitioner in Computer Science in Engineering Course in JBIT, R.R. District and referred the matter to the fourth respondent for the purpose of verification of the caste certificate produced by the petitioner. The fourth respondent, having verified the documents produced, passed the impugned order dated 02-08-2006 holding that as per the government memo dated 09-05-1991 the candidates from other States are not eligible for reservation in Andhra Pradesh State and therefore, the claim of the petitioner for reservation is rejected. The said order is under challenge in this writ petition.

I have heard the learned counsel for both the parties and perused the material on record.

The material on record shows that the social status claimed by the petitioner as Backwardclass-B was referred to the 4<sup>th</sup> respondent for verification. The claim made by the petitioner for reservation on the basis of the certificate issued by the Mandal Revenue Officer, Eluru, dated 22-7-2006 under B.C. category was rejected by the 4<sup>th</sup> respondent relying upon the Government Memo dated 9-5-1991 under which the children of the migrants are not entitled for the benefit of reservation even though particular caste existed in the list of Backward-classes of both the States i.e., State of Origin and State of Migration.

The learned Counsel for the petitioner contends that after

enforcement of A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act 16 of 1993 (for short, 'Act 16 of 1993), Memo dated 9-5-1991 stood annulled and therefore the action of the fourth respondent in rejecting the claim made by the petitioner is arbitrary and illegal.

It is to be noted that in exercise of powers conferred by Section 20 of Act 16 of 1993 Rules were made under G.O.Ms.No.58, Social Welfare (J) Department, dated 12-5-1997. Rule 20 of the said Rules made it clear that all the executive instructions, Government Orders, Government Memorandum issued which were in force before the commencement of the Rules shall stand annulled without prejudice to the validity of anything previously done in those Government Orders / Executive Instructions.

In the light of the specific provision under Rule 20, as rightly contended by the learned Counsel for the petitioner, the 4<sup>th</sup> respondent was not justified in rejecting the claim of the petitioner relying upon Memo dated 9-5-1991, which is no longer in force.

However, the learned Government Pleader contended that even after the enforcement of the Act 16 of 1993, certain administrative instructions were issued vide Circular dated 16-2-1998 under which the benefit of reservation was not extended to the children of the migrants. A copy of the said circular dated 16-2-1998 has been placed before this Court. On a perusal of the same, it is clear that the said circular only deals with the migrants who belong to Scheduled Castes and Scheduled Tribes. There was absolutely no reference to the Backward-class and no other provision is pointed out by the learned Government Pleader either from the Act or the Rules made thereunder which disentitles the children of the migrants the benefit of reservation under B.C. category.

The learned Government Pleader has also relied upon a decision of the Supreme Court in MARRI CHANDRA v. DEAN, S.G.S.

MEDICAL COLLEGE<sup>[1]</sup>. In the said case, the petitioner's father who had Scheduled Tribe certificate in the State of A.P. was migrated to the State of Maharashtra. The question that fell for consideration was as under :

*Whether one who is recognised as a Scheduled Tribe in the State of his origin and birth continues to have the benefits or privileges or rights in the state of migration or where he later goes?*

In the said case, the Court was exclusively dealing with a situation whether a member of SC/ST in one part of the country who migrates to another State should continue to be treated as SC/ST under which he has migrated though in State of migration it was not recognised as SC/ST.

In the case on hand, the facts are entirely different since Viswa Brahmin caste to which the petitioner belongs is recognised as backward-class both in the State of Rajasthan and State of Andhra Pradesh. Hence, the ratio laid down in the above decision of the Supreme Court is not attracted.

Moreover, it is obvious that in the instant case before passing the impugned order, the petitioner was not afforded any opportunity to substantiate his claim that even in the State of migration he is entitled for the reservation. Under the impugned order, the 4<sup>th</sup> respondent has unilaterally taken a decision on the basis of Memo which stood annulled on the enforcement of Act 16 of 1993.

Viewed from any angle, the impugned order cannot be sustained and accordingly the same is set aside.

In the result, Writ Petition is allowed with a direction to the 4<sup>th</sup> respondent to pass appropriate orders afresh in accordance with law after affording due opportunity to the petitioner to substantiate his claim as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order. No costs.

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**G. ROHINI, J**

Dated:12 -09-2006  
KLP

Section 3 of the Act dealing with Applicat

ion of a Community Certificate reads as hereunder :

- (1) Any person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes may in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes either for any public appointment or for admission into any educational institution in the State or outside the State for the students of the State or any other benefit under any special provisions made under clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or for elective posts in the Co-operative Institutions, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of a community certificate.
- (2) Any person belonging to a Scheduled Tribe may, for the purpose of claiming any benefit or protection meant for Scheduled Tribes under any notification, direction or regulation made under the Fifth Schedule to the Constitution of India or under any Act, Rule, Regulation or Order for the time being in force in the Scheduled Areas, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of community certificate.

**Explanation :**

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**For the  
purposes of  
this section  
and Section  
13,  
“Scheduled  
Areas”  
means the  
areas as  
defined in**

**paragraph 6  
of the Fifth  
Schedule to  
the  
Constitution.**

Section 4 of the Act dealing with Community Certificate to be issued by competent authority reads as hereunder :

- (1) The Competent Authority may, on an application made to it under Section 3 satisfy itself about the genuineness or otherwise of the claim made therein and thereafter issue a community certificate within such period and in such form as may be prescribed or reject the application for reasons to be recorded in writing. A certificate in regard to community issued by any person, officer of authority other than the competent authority shall be invalid.
- (2) Before the issue or rejection of a certificate under sub-section (1) the competent authority shall follow such procedure as may be prescribed.

At the outset, it is to be noted that the fact that the petitioner's father is a migrant from the State of Rajasthan is not in dispute. As a matter of fact, the petitioner himself filed a certificate dated 19-07-2006 issued by the Tahsildar, Ratangarh, Churu District, Rajasthan certifying that the father of the petitioner belongs to Viswabrahmin caste, which is included in other Backward Casts and his family is permanent resident of District Churu in Rajasthan. It is also admitted in the affidavit that the petitioner's father migrated to Andhra Pradesh in the year 1991.

The fourth respondent having taken into consideration the said undisputed fact and relying upon the memo dated 09-05-1991, held that the petitioner being the son of a migrant cannot be extended the benefit of reservation under B.C. category. For proper

appreciation, the memo dated 09-05-1991 may be extracted here under:

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The learned counsel for the petitioner contended that the said memo could not be pressed into service after the enactment of Andhra Pradesh (Scheduled Castes, Scheduled Tribes & Backward Castes) Regulation of Issue of Community Certificates Act, 1993 (for short the Act"). The learned counsel vehemently contended that under Section 3 of the Act, any person belonging to any of the Backward Classes may in order to claim benefit of any reservation, provided to such caste for any public appointment or for admission into any educational institution may make an application to the competent authority for issue of community certificate. Under Section 4 of the Act, the competent authority after being satisfied about the genuineness or otherwise of the claim, issue a community certificate. It is contended that the Act nowhere exempts the children of the migrants were being conferred with B.C. status and therefore, the action of the fourth respondent in rejecting the claim of the petitioner solely on the basis of the memo dated 09-05-1991 is arbitrary and illegal. It is also pointed out by the learned counsel for the petitioner that Viswabrahmin caste has been recognized as B.C. caste both in the State of Rajasthan as well as in the State of Andhra Pradesh and therefore, there is absolutely no justification in rejecting the claim of the petitioner.

In the counter filed by the fourth respondent, it is stated that apart from the memo dated 09-05-1991, the Government issued a further circular dated 16-02-1998 clarifying certain specific aspects with regard to issue of caste certificates, the Schedule Caste, Schedule Tribes and Backward Classes. So far as the migrants are concerned, it was clarified that where a person migrates from other State to the State of Andhra Pradesh he can claim to belong to a Schedule Caste or Schedule Tribe only in relation to the State to which he originally belonged and not in respect of the State of Andhra Pradesh to which

he has migrated. If the cast is not included in the Constitution under Order 1950 as amended in 1976 in the State of Andhra Pradesh.

The learned Government Pleader while placing reliance upon a decision of the Supreme Court in 1990(3)

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[\[1\]](#) (1990) 3 SCC 130